



February 22, 2000

Mr. Arthur E. Clayton  
Assistant County Attorney  
Johnson County Courthouse  
2 North Main Street  
Cleburne, Texas 76031

OR2000-0632

Dear Mr. Clayton:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132595.

The Johnson County Sheriff's Office (the "sheriff") received a written request for the full investigative report concerning a two year old boy who fell to his death on May 22, 1999. You contend that the requested information is excepted from required public disclosure pursuant to, *inter alia*, section 552.108(a)(2) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from required public disclosure "information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." This exception applies to records pertaining to criminal investigations and prosecutions that have concluded and did not result in a conviction or deferred adjudication. After reviewing the records at issue, we agree that the sheriff may withhold most of the requested information pursuant to section 552.108(a)(2) of the Government Code.

Section 552.108 does not, however, except from required public disclosure "basic information" about the incident. Gov't Code § 552.108(c). Because you have raised no exception that would protect such basic information, the sheriff must release this type of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*,

531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).<sup>1</sup>

We note that among the submitted documents is an autopsy report. Section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. Open Records Decision No. 529 (1989). Section 11 has been amended to provide that

[t]he records [of an autopsy] are subject to *required* public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Act of May 22, 1999, 76<sup>th</sup> Leg., R.S., ch 607, § 2. This amendment took effect on September 1, 1999. *Id.* § 3. We conclude that the sheriff must release the autopsy report to the requestor.<sup>2</sup>

Except for the “basic information” and autopsy report, which must be released, the sheriff may withhold all of the remaining information at issue pursuant to section 552.108(a)(2). Because we are able to resolve this matter under section 552.108, we do not address the other exceptions you raised.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

---

<sup>1</sup>We note that the records before reflect that the sheriff has previously released the “cover sheet” to two members of the public.

<sup>2</sup>The submitted documents do not appear to include photographs or x-rays taken during the autopsy. To the extent that such photographs or x-rays exist, they must be withheld pursuant to article 49.25 of the Code of Criminal Procedure.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/RWP/ch

Ref.: ID# 132595

cc: Ms. Lari Barager  
Fox 4 News  
1200 Summit Avenue, Suite 840  
Fort Worth, Texas 76102  
(w/o enclosures)